

Michael S. Davis  
Greg M. Bernhard  
Mary G. McCarthy  
ZEICHNER ELLMAN & KRAUSE LLP  
575 Lexington Avenue  
New York, New York 10022  
(212) 223-0400

*Attorneys for Petitioners  
National Union Fire Insurance Company of Pittsburgh, Pa.  
and American International South Insurance Company*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NATIONAL UNION FIRE INSURANCE COMPANY OF  
PITTSBURGH, PA. and AMERICAN INTERNATIONAL  
SOUTH INSURANCE COMPANY,

Petitioners,

- and -

THE UNITED COMPANY,

Respondent.

Case No.: 08-CV-3147 (MGC)

**DECLARATION  
IN FURTHER SUPPORT OF  
MOTION TO COMPEL  
ARBITRATION**

STATE OF NEW YORK,  
COUNTY OF NEW YORK.

MICHAEL S. DAVIS, pursuant to 28 U.S.C. § 1746, declares:

1. I am an attorney admitted to practice before this Court and associated with Zeichner Ellman & Krause LLP, attorneys for Petitioner National Union Fire Insurance Company of Pittsburgh, Pa. and American International South Insurance Company (collectively, the "AIG Companies"), on behalf of themselves and each of the related insurers that provided coverage to Respondent. I make this Declaration in further

support of the AIG Companies' request for an Order to compel Respondent to arbitrate the disputes asserted in the Complaint.<sup>1</sup>

2. Annexed hereto are the following documents:

- |           |   |
|-----------|---|
| Exhibit 1 | Letter dated August 28, 2007 from Jack W. Wiley of the Office of Insurance of the Commonwealth of . |
| Exhibit 2 | Policy Declarations Sheet for Policy WC 720—94-31   |
| Exhibit 3 | Coverage Notifications Forms filed with the United States Dept. of Labor                            |
| Exhibit 4 | Notices of Policy Termination Filed in Kentucky   |

3. I declare under penalties of perjury that the foregoing is true and correct.

Dated: April 2, 2008

  
MICHAEL S. DAVIS

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<sup>1</sup> Capitalized terms herein have the defined same meaning as set forth in the Petition.

## **EXHIBIT 1**

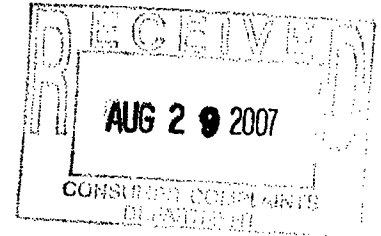
Ernie Fletcher  
Governor



Teresa J. Hill  
Secretary

Commonwealth of Kentucky  
**Environmental and Public Protection Cabinet**

Office of Insurance  
Consumer Protection and Education Division  
P.O. Box 517  
Frankfort, Kentucky 40602  
(502) 564-6034  
(800) 595-6053  
Fax (502) 564-6090  
<http://doi.ppr.ky.gov>



August 28, 2007

Thomas D. Griffin  
P.O. Box 1280  
Bristol, VA 24203 - 1280

*Don't say*

**RE: Our File No. 2007JWW213**

Dear Mr. Griffin:

Enclosed is a copy of the insurance company's response to the above referenced complaint. Our investigation indicates that the insurance company has not violated any insurance laws. The final answer to your complaint depends on a legal or factual determination and is beyond our statutory authority. According to 806 KAR 2:050, Section 2, legal or factual determinations can be made only by the courts.

If you have additional questions or need clarification, please contact me.

Sincerely,

Jack W Wiley  
Supervisor - Property & Casualty  
[Jack.Wiley@ky.gov](mailto:Jack.Wiley@ky.gov)

JWW/dd

Enclosure

Cc:

Tahaiwa Quarless, Manager  
American International South Insurance Company  
Consumer Complaints  
175 Water Street, 18th Floor  
New York, NY 10038

## **EXHIBIT 2**



## **EXHIBIT 3**

1. Mine Operator: **The United Company**
2. Address: **1005 Glenway Avenue, Bristol, VA 24203**  

|        |      |        |       |     |
|--------|------|--------|-------|-----|
| Street | City | County | State | Zip |
|--------|------|--------|-------|-----|
3. Policy Number: **WC 720-94-31**
4. Policy Dates: a. Beginning **11/01/06** b. Expiration **11/01/07**

Report is made of this issue of approved form of policy and endorsement under the Federal Coal Mine Health and Safety Act of 1969, as amended.

5. Coverage is provided for operations in the following States: **Kentucky and Virginia**
6. Insurance Carrier: **American International South Insurance Company** DO NOT WRITE HERE
7. Address: **1375 E. Ninth Street, Cleveland, OH 44114**  

OWCP No.  
Cancel Date
8. Authorized Signature for Carrier: *Vincent Catapano*

Completed card should be forwarded to U.S. Department of Labor, Office of Workmen's Compensation, Washington, D.C. 20210  
 FORM CM 921

*Mailed 11-16-06*



1. Mine Operator: Wellmore Coal Company  
2. Address: 1005 Glenway Avenue, Bristol, VA 24203  
Street City County State Zip  
3. Policy Number: WC 720-94-31 4. Policy Dates: a. Beginning 11/01/06 b. Expiration 11/01/07

Report is made of this issue of approved form of policy and endorsement under the Federal Coal Mine Health and Safety Act of 1969, as amended.

5. Coverage is provided for operations in the following States: Kentucky and Virginia  
6. Insurance Carrier: American International South Insurance Company DO NOT WRITE HERE  
7. Address: 1375 E. Ninth Street, Cleveland, OH 44114 OWCP No. \_\_\_\_\_  
8. Authorized Signature for Carrier: Vincent Catapano \_\_\_\_\_ OWCP No. \_\_\_\_\_  
Covered Date \_\_\_\_\_

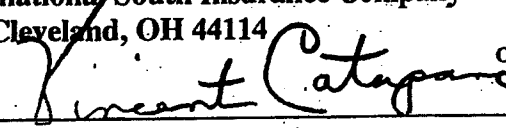
Completed card should be forwarded to U.S. Department of Labor, Office of Workmen's Compensation, Washington, D.C. 20210  
FORM CM 921

Mailed  
11-16-06

1. Mine Operator: **Sapphire Coal Company**
2. Address: **7727 Highway 1N, Whitesburg, KY 41858**  

|        |      |       |
|--------|------|-------|
| Street | City | State |
|--------|------|-------|
3. Policy Number: **WC 720-94-31**
4. Policy Dates: a. Beginning **11/01/06** b. Expiration **11/01/07**

Report is made of this issue of approved form of policy and endorsement under the Federal Coal Mine Health and Safety Act of 1969, as amended.

5. Coverage is provided for operations in the following States: **Kentucky and Virginia**
6. Insurance Carrier: **American International South Insurance Company** DO NOT WRITE HERE
7. Address: **1375 E. Ninth Street, Cleveland, OH 44114**
8. Authorized Signature for Carrier:  OWCP No. \_\_\_\_\_  
Cancel Date \_\_\_\_\_

Completed card should be forwarded to U.S. Department of Labor, Office of Workmen's Compensation, Washington, D.C. 20210  
**FORM CM 921**

*Mailed  
11-16-06*

## **EXHIBIT 4**

WCI-2  
Rev. 12/84DEPARTMENT OF WORKERS' CLAIMS  
1270 Louisville Road  
Frankfort, Kentucky 40601

## NOTICE OF POLICY CHANGE OR TERMINATION

NO TERMINATION OF COVERAGE SHALL TAKE EFFECT GREATER THAN TEN (10) DAYS PRIOR TO RECEIPT BY THE COMMISSIONER UNLESS THE EMPLOYER HAS OBTAINED OTHER INSURANCE AND THE COMMISSIONER HAS BEEN NOTIFIED BY THE INSURER ASSUMING THE RISK...COMMISSIONER'S POLICY PROHIBITS CANCELLING MORE THAN THREE IN ADVANCE...

## THIS IS TO CERTIFY THAT:

FEIN 54-2024819

1. Name of Insured Sapphire Coal Company; DBA \_\_\_\_\_  
Name of corporation or owners(s)

Nature of Business Underground Coal Mining; Phone No. \_\_\_\_\_

Business Address: Route 7, 1 Mile North of Isom  
(Street, RFD or Road) (P.O. Box No.)

Whitesburg KY 41858  
(City) (County) (State) (Zip Code)

2. Name of Insurance Carrier American International South Insurance Company  
(NAME OF INSURER MUST BE THE SAME AS ON WCI-1)

Address 1375 East Ninth Street Phone No. (216) 479-8910

Cleveland, OH 44114

3. The Insurer hereby notifies the Commissioner as of 07/28/07 (date),\*

THIS (Policy #) WC 720-94-31 IS:

(a) ☒ Cancelled in entirety (Include in Item 1 above all business names covered under this policy  
Use attachment if needed.)

(b) \_\_\_\_\_ The name of insured is amended as follows:  
(PLEASE ATTACH FORM WCI-1 SHOWING NEW NAME)

(c) \_\_\_\_\_ The address of insured is amended as follows:

1. Location(s) added \_\_\_\_\_

2. Location(s) deleted \_\_\_\_\_

3. Address changed to \_\_\_\_\_

(Use attachment if needed)

(d) \_\_\_\_\_ Other \_\_\_\_\_

(IF CARRIER NAME CHANGE, PLEASE ATTACH FORM WCI-1)

08/09/07

(Date)

  
 SIGNATURE OF UNDERWRITER

EACH SECTION MUST BE COMPLETED IN ENTIRELY  
 AND BEAR AUTHORIZED SIGNATURE TO BE ACCEPTED FOR PROCESSING.

WCI-2  
Rev. 12/94DEPARTMENT OF WORKERS' CLAIMS  
1270 Louisville Road  
Frankfort, Kentucky 40601

## NOTICE OF POLICY CHANGE OR TERMINATION

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## THIS IS TO CERTIFY THAT:

FEIN 54-2024819

1. Name of Insured Sapphire Coal Company; DBA \_\_\_\_\_  
Name of corporation or owners(s)

Nature of Business Underground Coal Mining; Phone No. \_\_\_\_\_

Business Address: Sandlick Mine, Route 931 \_\_\_\_\_  
(Street, RFD or Road) (P.O. Box No.)

Whitesburg KY 41858  
(City) (County) (State) (Zip Code)

2. Name of Insurance Carrier American International South Insurance Company  
 (NAME OF INSURER MUST BE THE SAME AS ON WCI-1)

Address 1375 East Ninth Street Phone No. (216) 479-8910

Cleveland, OH 44114

3. The Insurer hereby notifies the Commissioner as of 07/28/07 (date),\*

THIS (Policy #) WC 720-94-31 IS:

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 Use attachment if needed.)

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 (PLEASE ATTACH FORM WCI-1 SHOWING NEW NAME)

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1. Location(s) added \_\_\_\_\_

2. Location(s) deleted \_\_\_\_\_

3. Address changed to \_\_\_\_\_

(Use attachment if needed)

(d) \_\_\_\_\_ Other \_\_\_\_\_

(IF CARRIER NAME CHANGE, PLEASE ATTACH FORM WCI-1)

08/09/07

(Date)

Kincent Catapano  
 SIGNATURE OF UNDERWRITER

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WCI-2  
Rev. 12/94DEPARTMENT OF WORKERS' CLAIMS  
1270 Louisville Road  
Frankfort, Kentucky 40601

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## THIS IS TO CERTIFY THAT:

FEIN 54-2024819

1. Name of Insured Sapphire Coal Company; DBA \_\_\_\_\_  
Name of corporation or owners(s)

Nature of Business Underground Coal Mining; Phone No. \_\_\_\_\_

Business Address: Poly Mine, Route 931 \_\_\_\_\_  
(Street, RFD or Road) (P.O. Box No.)

Whitesburg KY 41858  
(City) (County) (State) (Zip Code)

2. Name of Insurance Carrier American International South Insurance Company  
 (NAME OF INSURER MUST BE THE SAME AS ON WCI-1)

Address 1375 East Ninth Street Phone No. (216) 479-8910

Cleveland, OH 44114

3. The Insurer hereby notifies the Commissioner as of 07/28/07 (date),\*

THIS (Policy #) WC 720-94-31 IS:

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 Use attachment if needed.)

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1. Location(s) added \_\_\_\_\_

2. Location(s) deleted \_\_\_\_\_

3. Address changed to \_\_\_\_\_

(Use attachment if needed)

(d) \_\_\_\_\_ Other \_\_\_\_\_

(IF CARRIER NAME CHANGE, PLEASE ATTACH FORM WCI-1)

08/08/07

(Date)

  
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## THIS IS TO CERTIFY THAT:

FEIN 54-2024819

1. Name of Insured Sapphire Coal Company; DBA \_\_\_\_\_  
Name of corporation or owners(s)

Nature of Business Underground Coal Mining; Phone No. \_\_\_\_\_

Business Address: 7727 Highway 931N  
(Street, RFD or Road) (P.O. Box No.)

Whitesburg KY 41858  
(City) (County) (State) (Zip Code)

2. Name of Insurance Carrier American International South Insurance Company  
 (NAME OF INSURER MUST BE THE SAME AS ON WCI-1)

Address 1375 East Ninth Street Phone No. (216) 479-8910

Cleveland, OH 44114

3. The insurer hereby notifies the Commissioner as of 07/28/07 (date),\*

THIS (Policy #) WC 720-94-31 IS:

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2. Location(s) deleted \_\_\_\_\_

3. Address changed to \_\_\_\_\_

(Use attachment if needed)

(d) \_\_\_\_\_ Other

(IF CARRIER NAME CHANGE, PLEASE ATTACH FORM WCI-1)

08/09/07

(Date)

Vincent Catapano  
 SIGNATURE OF UNDERWRITER

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## THIS IS TO CERTIFY THAT:

FEIN 54-2024819

1. Name of Insured Sapphire Coal Company; DBA \_\_\_\_\_  
Name of corporation or owners(s)

Nature of Business Underground Coal Mining; Phone No. \_\_\_\_\_

Business Address: 147 Big Blue Blvd.  
(Street, RFD or Road) (P.O. Box No.)

Whitesburg KY 41858  
(City) (County) (State) (Zip Code)

2. Name of Insurance Carrier American International South Insurance Company  
 (NAME OF INSURER MUST BE THE SAME AS ON WCI-1)

Address 1375 East Ninth Street Phone No. (216) 479-8910

Cleveland, OH 44114

3. The Insurer hereby notifies the Commissioner as of 07/28/07 (date),\*

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3. Address changed to \_\_\_\_\_

(Use attachment if needed)

(d) \_\_\_\_\_ Other \_\_\_\_\_

(IF CARRIER NAME CHANGE, PLEASE ATTACH FORM WCI-1)

08/09/07

(Date)

Vincent Catapano  
 SIGNATURE OF UNDERWRITER

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 AND BEAR AUTHORIZED SIGNATURE TO BE ACCEPTED FOR PROCESSING.



## TRANSMISSION VERIFICATION REPORT

TIME : 08/09/2007 13:03  
 NAME :  
 FAX :  
 TEL :  
 SER. # : BRCL5J377755

DATE, TIME  
 FAX NO./NAME  
 DURATION  
 PAGE(S)  
 RESULT  
 MODE

08/09 13:01  
 915025640916  
 00:01:35  
 07  
 OK  
 STANDARD  
 ECM

**Global Marine and Energy**

1375 East 9th Street, 30<sup>th</sup> Floor, Cleveland, Ohio 44114

|   |  |  |                                   |  |  |
|---|--|--|-----------------------------------|--|--|
| <b>Date:</b> August 9, 2007                 |  |  | <b>Pages (Including cover):</b> 7 |  |  |
| <b>Name:</b> Regina Goettel                 |  |  | <b>Kathy Merriner</b>             |  |  |
| <b>Company/Dept:</b>                        |  |  | <b>AIG Global Energy</b>          |  |  |
| <b>Location:</b> Kentucky                   |  |  | <b>Cleveland, OH</b>              |  |  |
| <b>Fax Number:</b> 502-564-0916             |  |  | <b>216-696-2842</b>               |  |  |
| <b>Phone Number:</b> 502-564-5550 ext. 4564 |  |  | <b>216-479-8910</b>               |  |  |
| <b>Email Address:</b>                       |  |  | <b>kathy.merriner@aig.com</b>     |  |  |

Attached are the WCI-2s for:

- Surface Minerals Company
- Sapphire Coal Company